

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
Richmond Division

In re: ) Chapter 11  
)  
CIRCUIT CITY STORES, INC., et al., ) Case No. **08-35653**  
)  
Debtors. ) Jointly Administered

**LIMITED OBJECTION OF SAFECO INSURANCE COMPANY  
OF AMERICA TO CONFIRMATION OF THE FIRST AMENDED  
JOINT PLAN OF LIQUIDATION OF CIRCUIT CITY STORES, INC.  
AND ITS AFFILIATED DEBTORS AND DEBTORS IN POSSESSION AND  
ITS OFFICIAL COMMITTEE OF CREDITORS HOLDING UNSECURED CLAIMS**

Safeco Insurance Company of America<sup>1</sup> (hereinafter referred to as “Safeco”), by and through counsel, hereby files its Limited Objection (the “Limited Objection”) to the First Amended Joint Plan of Liquidation of Circuit City Stores, Inc. and its Affiliated Debtors and Debtors in Possession and its Official Committee of Creditors Holding Unsecured Claims (the “Plan”). In support of its Limited Objection, Safeco respectfully states as follows:

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<sup>1</sup> For the purposes of this Objection, Safeco Insurance Company of America shall also include General Insurance Company of America, First National Insurance Company of America, Safeco National Insurance Company, Liberty Mutual Surety, and any of its or their parents, affiliates, subsidiaries and/or successors and assigns, and others as defined in the Indemnity Agreement attached as Exhibit 1 hereto.

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### **BASIS FOR OBJECTION**

1. On or about July 9, 1992, Circuit City Stores, Inc., one of the Debtors, executed a General Agreement of Indemnity in favor of Safeco (the "Indemnity Agreement"), a copy of which is attached to this Limited Objection as Exhibit 1.

2. Pursuant to the Article VII of the Plan (the "Executory Contract Provision"), all executory contracts shall be rejected as of the Effective Date unless: (a) they have previously been assumed, assigned or rejected; (b) have previously expired or terminated pursuant to their own terms; (c) are the subject of a pending motion to assume or reject; or (d) are identified in Exhibit C to the Plan as an insurance agreement of the Debtors. Specifically, the Executory Contract Provision states as follows:

Except as otherwise provided in the Confirmation Order, the Plan, or any other Plan Document, the Confirmation Order shall constitute an order under Bankruptcy Code section 365 rejecting all prepetition executory contracts and unexpired leases to which any Debtor is a party, to the extent such contracts or leases are executory contracts or unexpired leases, on and subject to the occurrence of the Effective Date, unless such contract or lease (a) previously shall have been assumed, assumed and assigned, or rejected by the Debtors, (b) previously shall have expired or terminated pursuant to its own terms before the Effective Date, (c) is the subject of a pending motion to assume or reject on the Confirmation Date, or (d) is identified in Exhibit C to this Plan as an insurance agreement of the Debtors; provided, however, that the Plan Proponents may amend such Exhibit C at any time prior to the Confirmation Date; provided further however, that listing an insurance agreement on such Exhibit shall not constitute an admission by a Debtor that such agreement is an executory contract or that any Debtor has any liability thereunder.

See Plan at Article VII, ¶A, p. 29.

3. The Indemnity Agreement: (a) has not been assumed, assigned, or rejected; (b) has not expired or terminated; (c) is not the subject of a pending motion to assume or reject; and

4. It is Safeco's position that the Indemnity Agreement is not an executory contract that can be rejected by the Debtors; however, the Debtors have previously taken the contrary position. As such, Safeco objects to confirmation of the Plan to the extent that the Plan (and any Confirmation Order) may attempt to reject the Indemnity Agreement as an executory contract. The Indemnity Agreement is not an executory contract that can be rejected by the Debtors.

5. Safeco also objects to the Plan because Paragraph B of the Executory Contract Provision sets a bar date for any party to file a Claim for damages based upon the rejection of an executory contract (a "Rejection Claim"). If Safeco is correct that the Indemnity Agreement is not an executory contract that may be rejected by the Debtors pursuant to the Plan, Safeco would have no such Rejection Claim. In the event that the Debtors fail to confirm and acknowledge in the Confirmation Order that the Indemnity Agreement is not an executory contract that is subject to rejection under the Plan, Safeco requests that it receive an extension of time in the Confirmation Order to file any Rejection Claim for a period of thirty (30) days after the date of any such order this Court may enter finding that the Indemnity Agreement is an executory contract and that it has been rejected pursuant to the Plan.

### **CONCLUSION**

WHEREFORE, Safeco respectfully requests that this Court sustain the Objection and grant such other and further relief as is just and proper.

Dated: November 16, 2009

Respectfully submitted,

/s/ Troy Savenko

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 16, 2009, a copy of the foregoing *LIMITED OBJECTION OF SAFECO INSURANCE COMPANY OF AMERICA TO CONFIRMATION OF JOINT CHAPTER 11 PLAN OF CIRCUIT CITY STORES, INC. AND ITS AFFILIATED DEBTORS* was served via electronic service upon the parties registered with the Court's CM/ECF Noticing System and served upon the following parties in the manner indicated below:

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